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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BASELINE FINANCIAL SERVICES, INC., Plaintiff and Respondent, v. JAMES A. HOBBS et al., Defendants and Appellants.	D069166 (Super. Ct. No. 37-2014-00026801-CU-CL-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, John S. Meyer, Judge. Affirmed.

Ahren A. Tiller for Defendants and Appellants.

No appearance for Plaintiff and Respondent.

I.

INTRODUCTION

Baseline Financial Services, Inc. (Baseline) filed this action against James A. Hobbs (James) and Rosalie J. Hobbs (Rosalie) (collectively the Hobbses). In a form complaint, Baseline brought a single cause of action for breach of contract against the

Hobbses. Baseline alleged that the Hobbses failed to pay the amount due under a contract for the sale of a recreational vehicle (the vehicle).[1] During a bench trial, Baseline presented evidence that after the Hobbses defaulted on a loan for the vehicle, Baseline's assignor (Bank of the West) repossessed the vehicle and sold it, and that there remained a deficiency balance on the loan, for which Baseline claimed the Hobbses were liable. At the conclusion of the trial, the court entered a judgment in favor of Baseline against the Hobbses in the amount of $115,378.76.

On appeal, the Hobbses claim that the trial court erred in entering judgment in favor of Baseline because Bank of the West failed to comply with provisions contained in Civil Code section 2983.2, subdivision (a)[2] related to a creditor's disposal of a repossessed vehicle. Section 2983.2, subdivision (a) requires that creditors provide a defaulting debtor with a notice of intention (NOI) to dispose of a repossessed vehicle. (See § 2983.2, subd. (a) ["at least 15 days' written notice of intent to dispose of a repossessed or surrendered motor vehicle shall be given to all persons liable on the contract"].) The statute conditions a creditor's right to recover a deficiency balance upon the giving of proper notice under the statute. (*Ibid.*)

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1 Baseline alleged that the contract was between the Hobbses and C&D Motors, LLC (C&D Motors), that C&D Motors assigned the contract to Bank of the West, and that Bank of the West assigned the claim to Baseline. Baseline attached the contract to its complaint.

2 Section 2983.2 is a provision of the Rees-Levering Automobile Sales Finance Act (Rees-Levering or the Act) (§ 2981 et. seq.), which governs conditional sales contracts of motor vehicles. (See generally *Juarez v. Arcadia Financial, Ltd.* (2007) 152 Cal.App.4th 889, 894 (*Juarez*).)

Unless otherwise specified, all subsequent statutory references are to the Civil Code.

The Hobbses contend that "[a]ll of the evidence supports a finding that Bank of the West failed to comply with the noticing requirements of . . . [section] 2983.2, [subdivision] (a)." Specifically, the Hobbses claim that Bank of the West did not send the requisite NOI to James within the statutory time frame, and did not send an NOI to Rosalie at her last known address, as is statutorily required. We conclude that there is substantial evidence in the record that Bank of the West timely sent James an NOI, and that Bank of the West sent an NOI to Rosalie at her last known address. Accordingly, we affirm the judgment.[3]

II.

FACTUAL BACKGROUND

A. *The trial*[4]

1. *Baseline's evidence*

James testified that he and Rosalie entered into a secured purchase agreement to buy the vehicle, that in late 2009 they[5] went into default on the loan, and that Bank of the West repossessed the vehicle in early 2010. James stated that the vehicle was repossessed at an address located on Via Rancho San Diego in El Cajon.

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3 Baseline did not file a respondent's brief. Accordingly, we decide the appeal on the record, the Hobbses' opening brief, and the Hobbses' oral argument. (See Cal. Rules of Court, rule 8.220(a)(2).)

4 Our factual background is drawn from the trial court's settled statement. "[W]e recite the facts in the light most favorable to the prevailing party . . . ." (*Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 747.)

5 The settled statement indicates that James testified that *he* went into default, but it is undisputed that both James and Rosalie were in default.

Judy Drury, a Bank of the West representative, authenticated a series of Bank of the West records that were admitted in evidence. Among the documents were the retail installment sale contract for the vehicle, a receipt dated February 18, 2010 from "ABA Recovery Service" documenting the repossession of the vehicle, a NOI dated February 22, 2010 from Bank of the West addressed to James at an address on Via Rancho San Diego in El Cajon, a certified mail receipt listing a "[d]ate of [d]elivery" of March 17, 2010 for the NOI addressed to James, a NOI dated February 22, 2010 from Bank of the West addressed to Rosalie at an address on East Country Drive in El Cajon, a receipt dated March 18, 2010 evincing a sale of the vehicle from Bank of the West to De Martini Auto Sales, and a document entitled "Explanation of Deficiency and Demand for Payment" (some capitalization omitted), dated March 29, 2010 from Bank of the West addressed to James at an address on Via Rancho San Diego and addressed to Rosalie at an address on East Country Drive.

Drury testified that Bank of the West sent the NOI to James on February 22. In addition, Drury testified that Bank of the West mailed the NOI to Rosalie at an address on East Country Drive because Rosalie had "not update[ed] her address with Bank of the West," and thus, the East Country Drive address was the last known address for Rosalie that the Bank of the West had on file.

2. *The defense*

As discussed in detail in part III.C, *post*, the defense attempted to demonstrate, through the cross-examination of Drury and testimony from James and Rosalie, that

Bank of the West had not timely sent an NOI to James and had not sent an NOI to Rosalie at her last known address.

3. *Closing arguments*

Baseline's counsel argued that James and Rosalie were sent proper NOIs for the vehicle and that Baseline was entitled to a deficiency judgment and ancillary interest and attorney fees. The Hobbses' counsel argued that Baseline was barred from recovering a deficiency judgment because Bank of the West did not send an NOI to James within the statutory time frame, and did not send an NOI to Rosalie at her last known address.

B. *The judgment*

The trial court entered a judgment in favor of Baseline against the Hobbses in the amount of $115, 378.76, consisting of $83,732.83 in damages, $28,310.60 in prejudgment interest, $2,737.33 in attorney fees, and $598 in costs.[6]

III.

DISCUSSION

There is substantial evidence in the record that Bank of the West timely sent James an NOI, and that Bank of the West sent an NOI to Rosalie at her last known address

The Hobbses contend that the trial court erred in entering a judgment in favor of Baseline because "[a]ll of the evidence" in the record demonstrates that Bank of the

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6 The judgment indicates that neither party requested a statement of decision. (See Code Civ. Proc., § 632 ["The court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial upon the request of any party appearing at the trial"].)

West failed to comply with the noticing requirements of section 2983.2, subdivision (a).[7]

A. *Standard of review*

An appellate court reviews findings by the trier of fact, express or implied, under the substantial evidence standard. (See, e.g., *Faigin v. Signature Group Holdings, Inc.* (2012) 211 Cal.App.4th 726, 736.) Substantial evidence is evidence that a reasonable person "might accept as adequate to support a conclusion," (*Estate of Teed* (1952) 112 Cal.App.2d 638, 644), or evidence "that is reasonable, credible and of solid value." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) "In a substantial evidence challenge to a judgment, the appellate court will 'consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings, express or implied]. [Citations.]' [Citation.] We may not reweigh the evidence and are bound by the trial court's credibility determinations." (*Tribeca Companies, LLC v. First American Title Ins. Co.* (2015) 239 Cal.App.4th 1088, 1102 (*Tribeca*).) If there is substantial evidence that supports a disputed express or implied finding, a reviewing court must uphold the finding "no matter how slight it may appear in comparison with the contradictory evidence . . . ." (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631 (*Howard*).

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[7] The Hobbses do not dispute that, by entering a deficiency judgment in favor of Baseline, the trial court impliedly found that Bank of the West had complied with the noticing requirements of section 2983.2, subdivision (a).

The Hobbses contend that whether "the [t]rial [c]ourt misapplied the proper law when analyzing whether [Bank of the West] complied with . . . section 2983.2[, subdivision] (a)'s notice requirement is reviewed do novo." However, the Hobbses' brief does not identify any purported misapplication of law committed by the trial court. Rather, the Hobbses' sole contention on appeal is that "[a]ll of the evidence supports a finding that Bank of the West failed to comply with the noticing requirements of . . . [section] 2983.2[, subdivision] (a)." Accordingly, we conclude that the substantial evidence standard of review applies, and consider below whether there is substantial evidence in the record to support the trial court's implied finding that Bank of the West complied with the noticing requirements of section 2983.2, subdivision (a).

B. *Governing law*

In *Juarez, supra,* 152 Cal.App.4th at page 894, this court summarized the Act as follows:

> "Rees-Levering provides a detailed framework that governs conditional sales contracts for motor vehicles. Under the Act, defaulting buyers whose cars have been repossessed by a creditor must be given the opportunity to redeem their vehicles by paying the full balance due under the contract. The Act also requires that defaulting buyers be given the opportunity, in many circumstances, to reinstate their contracts by curing the default and meeting certain other conditions set by the creditor. From the buyer's perspective, the option of reinstating a contract is often preferable to redemption, because reinstatement allows the buyer to recover the car without having to pay the full balance due on the contract, as is required in order to redeem the vehicle.
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> "The Act requires that creditors provide a defaulting buyer with a notice of intention (NOI) to dispose of the repossessed vehicle. To ensure that a defaulting buyer is made aware of his or her right to redeem or reinstate prior to the creditor disposing of the vehicle,

> the Act requires that creditors include in the NOI information about the buyer's right to redeem or reinstate."

Section 2983.2, subdivision (a) specifies the required content of an NOI and the manner by which an NOI must be served, and provides that a creditor may recover a deficiency from the person or persons liable on the contract only if an NOI is properly provided. The statute provides in relevant part:

> "(a) . . . [A]ny provision in any conditional sale contract for the sale of a motor vehicle to the contrary notwithstanding, *at least 15 days'* written notice of intent to dispose of a repossessed or surrendered motor vehicle shall be given to all persons liable on the contract. The notice shall be personally served or shall be sent by certified mail, return receipt requested, or first-class mail, postage prepaid, directed to the *last known address* of the persons liable on the contract. If those persons are married to each other, and, according to the most recent records of the seller or holder of the contract, reside at the same address, one notice addressed to both persons at that address is sufficient. . . . [T]hose persons shall be liable for any deficiency after disposition of the repossessed or surrendered motor vehicle only if the notice prescribed by this section is given within 60 days of repossession or surrender and does all of the following:
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> "(1) Sets forth that those persons shall have a right to redeem the motor vehicle by paying in full the indebtedness evidenced by the contract until the expiration of 15 days from the date of giving or mailing the notice and provides an itemization of the contract balance and of any delinquency, collection or repossession costs and fees and sets forth the computation or estimate of the amount of any credit for unearned finance charges or canceled insurance as of the date of the notice."[8] (Italics added.)

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8 Section 2983.2, subdivisions (a)(2) through (a)(9) set out additional requirements of the notice.

C. *Application*

The Hobbses contend that Bank of the West failed to provide either James or Rosalie with a proper NOI with respect to the vehicle pursuant to section 2983.2, subdivision (a).

With respect to James, the Hobbses claim that "Bank of the West . . . mailed [the NOI] well short of the required 15 days prior to the sale of the [vehicle] . . . ."

It is undisputed that Bank of the West sold the vehicle on March 18, 2010. Baseline presented in evidence an NOI with respect to the vehicle, dated February 22, 2010, addressed to James. The settled statement provides that Drury testified that the NOI "was mailed out on February 22, 2010." Such evidence constitutes substantial evidence that Bank of the West sent an NOI to James more than 15 days prior to the sale of the vehicle. (See, e.g., *Estate of Teed, supra*, 112 Cal.App.2d at p. 644 [defining substantial evidence as that which a reasonable person "might accept as adequate to support a conclusion"].)

In support of their contention that Bank of the West mailed the NOI to James less than the required 15 days prior to the sale of the vehicle, the Hobbses refer to evidence that James *received* the NOI on March 17, 2010.[9] The fact that there is evidence in the record that James *received* the NOI less than 15 days prior to the sale does not establish that the record lacks substantial evidence that Bank of the West *mailed* the NOI more than 15 days prior to the sale. (See, e.g., *Tribeca, supra*, 239 Cal.App.4th at p. 1102 [in

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9 The evidence consisted of a certified mail receipt showing that the NOI was delivered on March 17.

conducting substantial evidence review, appellate court considers all evidence in the light most favorable to the prevailing party].) Further, the Hobbses do not contend that section 2983.2, subdivision (a) requires that the buyer *receive* the NOI more than 15 days prior to the disposition of a repossessed vehicle.[10] Rather, they contend that the evidence in the record demonstrates that Bank of the West "*mailed* it well short of the required 15 days prior to the sale . . . ." (Italics added.) However, as discussed above, there is substantial evidence in the record that Bank of the West mailed the NOI on February 22, which is more than 15 days before the March 18 sale.

The Hobbses also contend that Bank of the West did not provide Rosalie with proper notice under section 2983.2, subdivision (a) because it failed to send an NOI to Rosalie at her "last known address" (§ 2983.2, subd. (a)) as statutorily required, but instead, sent an NOI to an address at which Rosalie had previously lived.

Baseline introduced in evidence an NOI with respect to the vehicle, dated February 22, 2010, addressed to Rosalie at an address on East Country Drive. The

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10 Accordingly, we do not decide whether section 2983.2, subdivision (a) requires that a debtor *receive* the NOI more than 15 days prior to the disposition of a repossessed vehicle. However, we note that section 2983.2, subdivision (a)(6) requires that the NOI state the creditor's "intent to dispose of the motor vehicle upon the expiration of *15 days from the date of giving or mailing the notice* . . . ." (Italics added.) It would therefore stand to reason that section 2983.2, subdivision (a) be interpreted to require only that the creditor *give or mail* the NOI 15 days before the disposition of the vehicle. It would make little sense for the statute to require that the NOI state that the seller intended to dispose of the vehicle 15 days after "*giving or mailing the notice*" (§ 2983.2, subdivision (a)(6), italics added), but require that the NOI be *received* by the debtor 15 days before disposition. Thus, section 2983.2, subdivision (a)(6) strongly supports the conclusion that section 2983.2, subdivision (a) merely requires that a creditor *mail* the NOI 15 days prior to the disposition of a vehicle, not that a debtor *receive* the NOI 15 days prior to the disposition.

settled statement provides that Drury testified that the NOI was mailed to " 'the last known address Bank of the West had on file for [Rosalie], and in order for them to update an address, Bank of the West needed her to fill out a change of address form.' " When Baseline's counsel asked Drury at trial whether Bank of the West had ever sent mail addressed to Rosalie to an address on Via Rancho San Diego—which is the address to which Bank of the West sent James his NOI and the location at which the vehicle was repossessed—Drury responded, " 'No. The last known address we had on file for her was [to an address on East Country Drive] where we sent the [NOI] marked as "Exhibit 9." ' "[11] The settled statement also provides, "due to not updating her address with Bank of the West, Ms. Drury testified that [Rosalie's] last known address was [on East Country Drive], therefore that is where Bank of the West mailed the [NOI] marked as 'Plaintiff's Exhibit 9' to Rosalie . . . ." This evidence constitutes substantial evidence that Bank of the West mailed the NOI to Rosalie's "last known address," as required pursuant to section 2983.2., subdivision (a). (See, e.g., *Estate of Teed*, *supra*, 112 Cal.App.2d at p. 644 [defining substantial evidence].)

The Hobbses argue, "Bank of the West indisputably failed to comply with [section 2983.2., subdivision (a)] as applied to . . . Rosalie . . . because Bank of the West

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11 The settled statement indicates that the Hobbses attempted to impeach Drury with a letter "dated January 4, 2010, addressed to both Rosalie . . . and James . . . at [an address on Via Rancho San Diego]." However, the settled statement indicates that the trial court excluded the letter because it had not been "disclosed prior to trial or in discovery." While the Hobbses refer in their brief to the proceedings in the trial court pertaining to their attempt to introduce the letter in evidence, they present no claim on appeal that the court erred in excluding the letter. Accordingly, we have no occasion to consider whether the trial court erred in excluding the January 4 letter.

did not mail the required [NOI] to Rosalie . . . at her last known address." In support of this contention, the Hobbses contend that "her last known address was . . . the location where the Bank of the West picked up the [recreational vehicle] and mailed notice to her husband, and co-defendant, James." Neither the fact that the vehicle was repossessed at the Via Rancho San Diego location nor the fact that Bank of the West sent *James* an NOI at the Via Rancho San Diego location establishes that *Rosalie's* "last known address," (§ 2983.2, subd. (a)) was on Via Rancho San Diego. In addition, while the Hobbses refer in their brief to Rosalie's testimony that: 1) she informed Bank of the West, prior to the date of the mailing of the NOI, that her address was on Via Rancho San Diego;[12] 2) she received correspondence from Bank of the West at the Via Rancho San Diego address on January 4; and 3) she never received the NOI sent to the East Country Drive address marked as Exhibit 9, it was up to the trial court to consider the credibility and weight of this testimony and determine whether the Bank of the West sent the NOI to Rosalie's "last known address." (§ 2983.2, subd. (a).) (See, e.g., *Tribeca*, *supra*, 239 Cal.App.4th at p. 1102 [appellate court reviewing the record for substantial evidence may not weigh the evidence or make credibility determinations].)

In sum, we conclude that there is substantial evidence in the record that Bank of the West timely sent James an NOI with respect to the vehicle, and that Bank of the

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12 The settled statement also provides that James "testified that he lived with his wife at [the Via Rancho San Diego address] and that Bank of the West knew both [he and Rosalie] lived at said address at the time of the repossession. [James] testified that he had informed Bank of the West of their current address when he arranged for them to pick [up] the [vehicle]."

West sent Rosalie an NOI with respect to the vehicle at her last known address. Accordingly, we conclude the trial court did not err in entering a judgment for a deficiency balance in favor of Baseline.[13]

IV.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

O'ROURKE, J.

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13 We emphasize that, while the trial court could have made contrary factual findings, reversal is not warranted because substantial evidence supports the judgment. (See, e.g., *Howard*, *supra*, 72 Cal.App.4th at p. 631.)